

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Complaint of GameFly, Inc.

Docket No. C2009-1R

Competitive Product List
Adding Round-Trip Mailer

Docket No. MC2013-57

Competitive Product Prices
Round-Trip Mailer (MC2013-57)

Docket No. CP2013-75

NOTICE AND ORDER ON REQUEST TO ADD ROUND-TRIP MAILER PRODUCT
TO COMPETITIVE PRODUCT LIST

(Issued July 30, 2013)

I. INTRODUCTION

On July 26, 2013, the Postal Service filed a request to create a new competitive product, tentatively called "Round-Trip Mailer," to replace existing market dominant mailer options for round-trip DVD mail.¹ The Request, submitted in response to the

¹ Docket No. C2009-1R, Request of the United States Postal Service Under Section 3642 to Create Round-Trip Mailer Product, July 26, 2013, at 2 (Request). See Order No. 1763, Docket No. C2009-1R, Order on Remand, June 26, 2013 (Order No. 1763).

Commission's order on remand in Docket No. C2009-1R, equalizes the rates for letter-shaped and flat-shaped round-trip DVD mail.

The Request is made pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* As proposed, the requested changes would: (1) remove Letter Round-Trip Mailer and Flat Round-Trip Mailer from the market dominant product list; and (2) add the new Round-Trip Mailer product to the competitive product list. Request, Attachment B. The Request has been assigned Docket No. MC2013-57.

The Postal Service contemporaneously filed proposed changes to the Mail Classification Schedule (MCS) that contain outbound and return prices for the proposed Round-Trip Mailer product. Those changes have been assigned Docket No. CP2013-75.

Request. The Request includes the following supporting material:

- Attachment A—a Statement of Supporting Justification addressing applicable rule 3020.32 requirements;
- Attachment B—proposed Mail Classification Schedule language; and
- Attachment C—a letter dated May 17, 1985, describing the Postal Service's interpretation of the Private Express Statutes as they apply to the overseas transmission of computer software in the form of magnetic media.

Product description. The existing Letter Round-Trip Mailer and Flat Round-Trip Mailer classifications were established by Order No. 718, in response to the Commission's finding of discrimination in Docket No. C2009-1.² The Postal Service asserts that the proposed Round-Trip Mailer product would be "functionally similar" to the existing First-Class Mail Round-Trip Mailer. *Id.* Attachment A at 1. It further states that "service standards and processing elements" of the proposed product would be

² Docket No. C2009-1, Order on Complaint, April 20, 2011, Appendix B (Order No. 718).

“identical to the service currently received by First-Class Mail letters and flats.” Request at 3.

The Postal Service contends that, although the existing First-Class Mail Round-Trip Mailer is currently classified as market dominant, it fulfills all of the criteria for competitive products under 39 U.S.C. 3633. *Id.* Attachment A at 2-3. The Postal Service describes the proposed Round-Trip Mailer product as one that competes with “newer and increasingly dominant forms of digital content delivery,” such as online streaming and physical DVD rental services. *Id.* at 4. However, it acknowledges that it is not aware of “another shipping company that provides door-to-door delivery of optical discs such as DVDs.” *Id.* at 3. The Postal Service argues that the proposed product is “outside the scope of the letter monopoly because it is not a letter, or because the letter content is within the scope of one of the exceptions/suspensions to the Private Express Statutes.” *Id.* at 5. It bases this argument on the content of the proposed product, which would be limited to optical discs, invoices, and advertisements. *Id.*

Additional Information. The Request, which proposes to add a new product to the competitive product list, failed to include information required by 39 CFR part 3015. Not later than August 5, 2013, the Postal Service shall file with the Commission: (1) sufficient revenue and cost data for the 12-month period following the effective date of the proposed rates to demonstrate that the proposed Round-Trip Mailer product will be in compliance with 39 U.S.C. 3633(a)(2); and (2) a certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the effective date of the proposed rates, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3). See 39 CFR 3015.3.

Board of Governors’ approval. The Postal Service states that it intends to present the proposal contained in the Request to the Board of Governors for approval on July 31, 2013. Request at 4. If the Board of Governors does not approve the proposal or chooses to amend it, the Postal Service will “amend or rescind” its Request.

Id. at 4. To avoid potential confusion, the Postal Service shall file with the Commission notice of the determination of the Board of Governors with respect to the Request as soon as practicable, but no later than August 2, 2013.

Potential subsequent proceedings. Consistent with Order No. 1763, if the Postal Service amends its Request pursuant to a determination by the Board of Governors, the effective date of any rates proposed in the amended Request shall be no later than September 30, 2013. See Order No. 1763 at 39, ¶2.

The intent of this phase of the proceeding is to implement a remedy responsive to the Court's remand in *GameFly v. Postal Regulatory Commission*, 704 F.3d 145 (D.C. Cir. 2013). The Postal Service has elected to equalize rates for eligible Round-Trip Mailers by reducing the price for a two-ounce First-Class flat-shaped round-trip DVD mailer to the price for a one-ounce First-Class letter-shaped round-trip DVD mailer. Consistent with Order No. 1763, if the Postal Service rescinds its Request or if the Commission denies the Request to establish the Round-Trip Mailer product as a competitive product, the Letter Round-Trip Mailer and Flat Round-Trip Mailer options established by Order No. 718 shall remain on the market dominant product list and the Postal Service shall implement the rates and associated MCS language changes provided in the third ordering paragraph of Order No. 1763. These changes shall be effective no later than September 30, 2013. See *Id.* at 39, ¶3.

II. NOTICE OF FILINGS

The Commission establishes Docket Nos. MC2013-57 and CP2013-75 for consideration of the Request. Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3633, 3642 and 3662 and 39 CFR part 3015 and 3020, subpart B. Comments are due no later than August 15, 2013. Reply comments, if any, are due

August 22, 2013. These filings can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints Tracy N. Ferguson to serve as the Public Representative in Docket Nos. MC2013-57 and CP2013-75.³

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket Nos. MC2013-57 and CP2013-75 for consideration of the Request of the United States Postal Service Under Section 3642 to Create Round-Trip Mailer Product.
2. Pursuant to 39 U.S.C. 505, Tracy N. Ferguson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in Docket Nos. MC2013-57 and CP2013-75.
3. The Postal Service shall file the additional information identified in this Order no later than August 5, 2013.
4. The Postal Service shall file notice of the determination of the Board of Governors with respect to the Request as soon as practicable, but no later than August 2, 2013.
5. Comments by interested persons in these proceedings are due no later than August 15, 2013.

³ Ms. Ferguson also serves as Public Representative in Docket No. C2009-1R. See Order No. 1788, Docket No. C2009-1R, Notice and Order Designating Substitute Public Representative, July 24, 2013.

6. Reply comments are due no later than August 22, 2013.
7. The Secretary shall arrange for the publication of this Order in the *Federal Register*.

By the Commission.

Ruth Ann Abrams
Acting Secretary